IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No.67 of 2006
with
Civil Application No.72 of 2006

M/s Zenal Construction Pvt Ltd... appellants
vs
Nirlon Employees Coop Hsg Society Ltd..Respondents

Mr P.S.Dani for P S Shah for appellant

Mr S P Kanuga i/b Ms Sheetal V Malvankar for respondents

CORAM; A.M.KHANWILKAR J.

DATED 30.l.2006

P.C.

l. Heard the learned counsel for the parties. This Appeal takes exception to the judgment and order passed by the City Civil Court Bombay dated 9.l2.2005 rejecting the notice of motion no.2l27 of 2005 taken out by the appellant-plaintiff to restrain the respondents-defendants from accepting any tender from third parties and from acting thereunder for redevelopment of building nos l0,ll,l2 and l3 situated at Siddarth Nagar III S V Road, Goregaon (West) Mumbai 62.

2. Indeed, the argument of the appellant that the court below has not analysed the relevant documents on record to record a finding that there was a

concluded contract between the parties; instead holding that admittedly there was no written agreement executed between the parties after negotiations in that behalf and making that as a ground for refusing relief appears to be attractive. However, on a closer scrutiny of the matter, I see no reason to entertain this appeal because the ultimate conclusion reached by the trial court for dismissing the notice of motion taken out by the appellant will have to be upheld.

3. This is so because the suit filed by the appellant and the substantive relief claimed therein is on the basis that the resolution passed by the respondent society on 28.2.2004 is valid and subsisting and binding on the defendant society. The said resolution reads thus:

> "Resolved that:
>
> Majority of the members of the society had given their consent for the appointment of M/s Zenal Constructions Pvt Ltd-Director - Mr Prakash Barot as our Builder and Developer for the redevelopment of our society buildings and M/s Rex Con Cor Consultants Pvt Ltd as our project

Management Consultant which would include Project Engineer, Architect, Civil Lawyer, Financial Adviser.

Resolved that,

The Managing Committee is authorised to take appropriate decisions to complete the development work for time to time"

This resolution merely indicates that majority of members of the society consented to the appointment of the appellant for development work of the society's buildings. Based on that resolution, before appointment was to be given effect to, negotiations with the managing committee was to preceed . Indeed, the documents on record would indicate that negotiations proceeded between the managing committee and the appellant as can be seen from the letter dated 9.3.2004 at page 328, letter dated l9.5.2004 at page 348 and letter dated l.7.2004 at page 362. However, what is overlooked by the learned counsel for the appellant is that negotiations by the managing committee were to be translated into an agreement only after the general body of the society was to approve that action. The issue therefore, was placed before the general

body of the society on l0.4.2005.Instead of agreeing to enter into an agreement with the appellant, the general body of the society proceeded to cancel its earlier resolution dated 20.2.2004 - whereunder the appellants were to be appointed for development work of the society's buildings. The subsequent resolution passed by the society on l0.4.2005 has not been put in issue in the suit. On the other hand the appellants in para 2l of the plaint conceded the position that the general body has taken a decision to remove the appellants from the said project as developer, which was informed vide letter dated 30.4.2005 mentioning that the appellants' appointment has been terminated on l8.3 2005 itself. Even this communication is not put in issue and no relief is claimed in the plaint in that behalf. What is relevant to note for our purpose is that there is substance in the stand taken on behalf of the respondents that assuming that there was concluded contract between the parties, same was to be in the nature of a "development agreement". The appellants were given authority to develop the property of the society. In such a case question of granting any relief of specific performance will not arise.

3. Be that as it may, even if the plaintiffs' case was to be accepted as it is for the time being to consider the relief of temporary injunction, the question is whether the plaintiffs will suffer irreparable loss and whether balance of convenience is in favour of the plaintiffs. In the first place, as mentioned earlier,no relief to question the decision of the general body dated l0.4.2005 and the communication sent by the managing committee of the society of the said decision to the plaintiffs on 30.4.2005 have been put in issue or challenged in the suit. In any case, even if the plaintiffs were to succeed in the suit they can be compensated in terms of money for the loss or damages suffered by them. If that is so, the question of granting any interim relief in such a situation will not arise. I am conscious of the fact that the court below has not addressed itself to this aspect while dismissing the notice of motion taken out by the plaintiffs. However, in my opinion, for the ultimate conclusion reached by the trial court,with which I am in agreement, for the reasons recorded earlier, no fruitful purpose will be served by relegating the parties before the trial court. In the circumstances, no case for admission of the appeal is made out. Appeal is dismissed.

4. At this stage the learned counsel for the appellants prays that the parties be directed to maintain status quo for a period of four weeks to enable the appellants to take up the matter in appeal before the Apex Court. This prayer is opposed by the learned counsel for the respondents. It is stated that the respondents have already invited tenders for appointment of new developer. It will be open to the appellants to participate in the said tender procedure if so advised. In my opinion, it will not be appropriate to intervene in the tender procedure invited by the respondent society. As per the offer given by the respondents the appellants may consider to participate in the tender procedure if so advised. The tender procedure may proceed but the final contract shall not be awarded for a period of four weeks from today.